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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~426.~~ 183

HENRY MEYER AND GEORGE A. MEYER, PLAINTIFFS IN ERROR,

VS.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 27, 1874.

Affirmed.

Bradley

SUPREME COURT OF THE UNITED STATES.

No. 426.

HENRY MEYER AND GEORGE A. MEYER, PLAINTIFFS IN ERROR,

VS.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Henry Meyer & George A. Meyer, plaintiffs in error, and Chester A. Arthur, defendant in error, a manifest error hath happened, to the great damage of the said Henry Meyer & George A. Meyer, as is said, and as appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October, 1874, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this ninth day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is allowed, May 8, 1874.

SAML. BLATCHFORD.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to 32, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Henry Meyer and George A. Meyer, plaintiffs in error, and Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-second (22d) day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-eighth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

3 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of October, 1872.

Witness the honorable Lewis B. Woodruff, one of the judges of the said circuit court.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that heretofore, to wit, on the 14th day of November, 1872, in October term of that year, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Henry Meyer and George A. Meyer, by Chase, Hartley & Coleman, their attorneys, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

4 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit.

HENRY MEYER & GEORGE A. MEYER
v.
CHESTER A. ARTHUR.

Of the October term, in the year one thousand eight hundred and seventy-two, to wit, of the 14th day of November, A. D. 1872.

Henry Meyer & George A. Meyer, plaintiffs in this suit, come into court, and by Chase, Hartley & Coleman, their attorneys, give the court now here to be informed that heretofore, to wit, on the thirtieth day of October last past, this action was commenced in the supreme court of the city of New York, according to the laws of the State of New York, and the rules and practice of said court, in favor of the said plaintiffs against the defendant herein upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court; that the defendant afterwards, by his attorney, Noah Davis, esquire, duly appeared in said action, and thereupon, on the thirteenth day of November, in the year one thousand eight hundred and seventy-two, the said action was duly removed by writ of certiorari for further prosecution into this court, according to the act of Congress in such case made and provided; and the clerk of the said supreme court did thereupon return the said writ with the said summons, and duly file the same in this court, which allegations the defendant admits to be true.

Wherefore, let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that whereas said defendant, on the 30th day of October, eighteen hundred and seventy-two, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of twelve hundred and fifty-three and $\frac{55}{100}$ dollars, lawful money of the United States of America, for duties on merchandise, to wit, nitrate of lead, white lead, orange lead, red lead, & oxide of zinc, imported into and entered at the collection-district of the United States for the city of New York, on divers days between the 24th day of July & the 12th day of October, in the year one thousand eight hundred and seventy-two, in the following vessels, to wit: Abyssinia, Hudson, Frithiof, Algeria, Anatua, Wallace, Wyoming, Cornelius, Grinnel, Cuba, New World, Calabria, & Liverpool, from Great Britain; Washington & Ville de Paris from Havre; the Jessore & Dio Fili from Antwerp; & the Ocean from Rotterdam, unlawfully demanded, exacted, and received at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of thirteen hundred dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned when he should be thereunto afterwards requested.

Nevertheless, said defendant (although often afterwards requested so to do) has not paid said sums of money or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs has hitherto refused, and still does refuse, to the damage of the said plaintiffs of two thousand dollars, and therefore the said plaintiffs bring suit, &c.

5 Supreme court, city and county of New York.

HENRY MEYER AND GEORGE A. MEYER
against
CHESTER A. ARTHUR.

NEW YORK, *November* 4, 1872.

SIR: This action is brought to recover duties illegally exacted by defendant as collector of customs at the port of New York, and the following is the bill of particulars therein, viz:

Name of importer, (for all the importations,) plaintiffs under the firm-name of " H. & F. W. Meyer."

	Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision thereon.	Bond No.
				1872.	1872.	1872.		1872.	1872.		
1	Importation nitrate of lead......	Liverpool	Abyssinia	July 18	Aug. 3	Aug. 2	16 40	Sept. 24	Sep. 26	Oct. 17	....
2	" white lead	London	Hudson	June 19	" 13	Aug. 14, Sep. 10	65 38	" "	" "	" "	....
3	" "	"	Frithiof	April 30	July 24	" 2, " "	100 09	" "	" "	" "	17,345
4	" oxide of zinc.......	Havre	Washington.......	July 15	Aug. 2	Aug. 2	94 18	" "	" "	" "	....
5	" nitrate of lead......	Liverpool	Algeria..........	" 31	" 17	" 17	16 42	" "	" "	" "	....
6	" orange lead.......	Newcastle..........	Anatia	June 14	" 27	" 31	17 68	" 25	" 26	" "	....
7	" white lead	London	Wallace..........	" 12	" 29	" "	98 58	" "	" "	" "	....
8	" oxide of zinc.......	Antwerp	Jessare..........	July 18	" 28	" "	96 68	" "	" "	" "	....
9	" do.	Havre..........	Ville de Paris......	Aug. 10	" 30	" 30	96 68	" "	" "	" "	....
10	" nitrate of zinc......	Liverpool	Wyoming	" 14	Sep. 12	Sep. 12	15 68	" "	" "	" "	....
11	" white lead	London	Condino Grinnell..	July "	" 4	" 4	68 31	" "	" "	" "	....
12	" nitrate of lead......	Liverpool	Cuba..........	Aug. 26	" 11	" 11	15 94	" "	" "	" "	....
13	" oxide of zinc.......	Havre..........	Washington	" 28	" 13	" 14	193 38	" "	" "	" "	....
14	" do.	Rotterdam	Oceaan..........	July 12	" 16	" 17	96 69	" "	" "	" "	....
15	" white lead	London	New World.......	Aug. 1	" 18	" 19	66 36	" "	" "	" "	....
16	" nitrate of lead......	Liverpool	Algeria..........	Sep. 6	" 21	" 21	17 00	" "	" "	" "	....
17	" oxide of zinc	Antwerp	Dio Fili..........	July 8	Oct. 7	" 8	96 69	Oct. 9	Oct. 21	" 29	....
18	" nitrate of lead......	Liverpool	Calabria..........	Sep. 18	" "	" "	16 34	" "	" "	" "	....
19	" white lead	London	Liverpool	Aug. 22	" 10	" 11	65 08	" 15	" "	" "	....

Very respectfully,

CHASE, HARTLEY & COLEMAN,
Attorneys for Plaintiff, 51 *William Street.*

To Hon. NOAH DAVIS, *Attorney for Defendants.*

6 United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads. } Plea.
HENRY MEYER & AL.

And the said defendant, Chester A. Arthur, by Noah Davis, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant; and of this he puts himself upon the country; and the said plaintiff' do the like, &c.

7 And because the aforesaid issue so as aforesaid joined in this cause between the parties aforesaid was not tried at the said circuit court held at the time and place last aforesaid in and for the said southern district of New York and second circuit, therefore the process between the parties aforesaid is continued until the circuit court appointed to be held at the United States court buildings in the city of New York, in and for the circuit and district aforesaid, on the third Monday of October, in the year of our Lord one thousand eight hundred and seventy-three.

At which said last-mentioned day, before the judges aforesaid, at the place last aforesaid, come the parties aforesaid by their respective attorneys; and hereupon the issue above joined is ordered by the said circuit court to be tried at the circuit court appointed to be held at
8 the United States court buildings in the city of New York for
the circuit and district aforesaid on the third Monday of October, 1873.

And now at this day, to wit, on the third Monday of October, in the year of our Lord one thousand eight hundred and seventy-three, before the judges aforesaid, at the U. S. court buildings in the city of New York, come' the said defendant, by his attorney, George Bliss; and Nathaniel Shipman, esquire, one of the judges of the circuit court of the United States, in the second circuit, before whom the said issue was tried, hath sent hither his record, had before him, in these words, to wit: Afterwards, that is to say, on the day and at the place within contained, before Nathaniel Shipman, esquire, one of the judges of the circuit court of the United States in the second circuit within named,
9 according to the form of the statute in such case made and provided, came as well the within-named plaintiffs as the within-named defendant, by their respective attorneys within mentioned, and the jurors of the jury, summoned to try the said issue, being called, also come; who, to speak the truth of the matters within contained, being chosen, tried, and sworn, say upon their oath that the said defendant did not undertake or promise in manner and form as the said plaintiffs have within complained against him.

10 Therefore, it is considered that the said plaintiffs take nothing by their said declaration, but that they be in mercy, &c. And that the said defendant do go thereof without day, &c. And it is further considered by the said court now here, that the said defendant do recover against the said plaintiffs eighty-one $\frac{74}{100}$ dollars for his costs and charges by him about his defense in this behalf laid out and expended, by the said court here adjudged to the said defendant and with his as-

sent, according to the form of the statute in such cases made and provided; and that the said defendant have execution thereof, &c.

Judgment signed this 17 day of April, 1874.

R. E. STETWELL,
Dep. Clerk.

(Indorsed:) Vol. 8, p'ge 339, U. S. circuit court. Chester A. Arthur ads. Henry Meyer & George A. Meyer. Judgment-record. Geo. Bliss, attorney for defendant. Costs, $81.74. Filed Ap'l 18, 1874.

11 U. S. circuit court, southern district of New York, second circuit.

HENRY MEYER AND GEORGE A. MEYER
vs.
CHESTER A. ARTHUR.
} Bill of exceptions.

Be it remembered that, in the trial of the above-entitled cause, the plaintiffs excepted to the refusal of this court to instruct the jury in matter of law, as requested by the plaintiffs, and to such refusal the plaintiffs then excepted, and file this their bill of exceptions.

It appeared in evidence, upon the trial before the jury, that plaintiffs were, during the year 1872, and ever since have been, partners under the firm-name of H. & F. W. Meyer, and the defendant was, during the same period, the collector of customs of the United States at the port of New York.

That, subsequent to August 1st, 1872, and in that year, plaintiffs, as such firm, imported from foreign ports, into the port of New York, certain merchandize, known in trade as white lead, nitrate of lead, 12 oxide of zinc, dry and orange mineral.

That, upon the entry of said articles at said port, defendant, as such collector, assessed and collected from the plaintiffs, as such firm, the duties payable thereon under the existing laws, passed prior to June 6th, 1872, and refused to make the reduction provided in section 2, act of Congress of June 6th, 1872, to wit, that on and after August 1st, 1872, there shall be a reduction of 10 % upon the existing duties upon "all metals not herein otherwise provided for, and on all manufactures of metals of which either of them is the component part of chief value, excepting percussion-caps, watches, jewelry, and other articles of ornament."

That plaintiffs paid the alleged excess of duty under protest, claiming the merchandise imported was entitled to the said reduction of duty under the law above cited, upon the ground that these articles were respectively manufactures of lead or zinc, and brought this action within the proper time to recover said ten per centum, claimed to have been illegally exacted. The requirements of the laws of the United States relative to protest, appeal, and suit, were duly complied with by 13 the plaintiffs. The amount to be recovered (if plaintiffs are entitled to recover) is, on oxide of zinc imported six hundred and seventy-four dollars and seventy-two cents; on white lead, three hundred and sixty dollars and seventy-two cents; on nitrate of lead, eighty-one dollars and forty cents; and on orange mineral, seventeen dollars and seventy-seven cents; in all, the sum of eleven hundred and thirty-four dollars and sixty-one cents, with interest at seven per cent. per annum from October 11, 1872.

Oxide of zinc is manufactured in European establishments, as follows:

Sheets of zinc ordinarily sold in commerce are placed in retorts. The

face of the retort has an opening large enough to admit the sheet. The backs of the retorts are enclosed in a furnace, and the retorts are heated by bituminous coal to a white heat. The action of the heat vaporizes the spelter, which is entirely consumed. The vapor passes out of the mouth of the retort into large pipes, into which currents of air are forced. The vapor combines with the oxygen of the air, and becomes
white, snow-like flakes. The current bears these flakes along
14 through the pipes, which terminate in long chambers. At the mouth
of the pipes bags are suspended, in which the flakes are caught; no further process is required.

The oxide of zinc in suit was manufactured in this way.

Nitrate of lead is a chemical combination of lead and nitric acid. Lead previously melted and cooled is placed in a vessel filled with dilute heated nitric acid, and subjected to a slight additional heat. The nitrate of lead is formed in crystals upon the side of the vessel. Its form as a commodity in the market is ordinarily that of a white, opaque crystal.

Orange or red lead is made by roasting dry white lead in a furnace and exposing it to the air which is admitted into the heated receptacle. By this process, the white lead loses a portion of its carbonic acid, and absorbs oxygen from the air. Orange or red lead is used by paper-stainers, manufacturers of wall-paper, and for highly-colored cards.

White lead is manufactured as follows:

Small earthen pots are partially filled with vinegar or acetic
15 acid; pig-lead of commerce, cast into round perforated plates,
technically called buckles, are placed in the pots above the acid, and not in contact with it. The pots thus filled are placed in a chamber upon a layer of spent tan-bark. Alternate layers of pots and tan-bark are filled up to the roof of the chamber; air is introduced into the chamber through flues and natural crevices. The tan contains moisture, becomes heated, and evolves carbonic acid. By chemical action the lead is oxydized by the oxygen of the air, and then, in combination with the carbonic acid, becomes a carbonate of the oxide of lead.

The acetic acid does not touch the lead, but its presence facilitates the process of oxydation.

In the course of three months the lead has generally become entirely oxydized, of a white color, but retaining its original shape of a buckle. It is then crushed in rollers, any uncorroded pieces of lead having first been separated from it, then ground and dried. Then if it is to be sold
in oil, it is reground with linseed-oil.

16 An analysis of the articles in question gave the following results:

Oxide of zinc.

Zinc	79.98
Oxygen	19.67
Insoluble matter and impurities	.35
	100.00

Orange mineral.

Lead	90.69
Oxygen with traces of carbonic acid	9.31
	100.00

Dry white lead.

Lead	80.11
Oxygen	6.19
Carbonic acid	11.39
Water	2.31
	100.00

17 *White lead in oil.*

* Dry white lead	92.92
Linseed-oil	7.08
	100.00

Nitrate of lead.

Lead	61.90
Oxygen	4.90
Nitric acid	32.35
Moisture	.74
Traces of free nitric acid, insoluble matter	.11
	100.00

18 The metals named in the respective analysis are the components of chief value. There is no metallic zinc or metallic lead, in the ordinary sense of these words, that is, no metallic zinc or metallic lead of commerce in either of these articles. The ingredients in each of the articles unite by reason of their chemical affinity. Oxide of zinc has a different specific gravity, density, and color from metallic zinc. White lead and nitrate of lead have each a different specific gravity, density, and color from metallic lead.

The manufacture of orange or red lead and white lead, either dry or in oil, is carried on by the same persons in the same establishment, commencing with the corrosion of the lead and stopping the manufacture at certain stages according to the product desired.

Oxide of zinc and white lead are principally used as pigments. Nitrate of lead is used largely in dyeing and in the manufacture of pigments and as a disinfectant, and for other purposes. It is never ground in oil. Oxide of zinc, white lead, and red lead are imported both dry and ground in oil. They must be ground in oil before they can be used as paints.

19 The oxide of zinc and the red lead in the invoices in controversy were dry and the white lead was ground in oil, and were all to be used in the manufacture of or as pigments.

---

* This dry white lead gave the following result:

Lead	80.20
Oxygen	[illegible]
Carbonic acid	[illegible]
Water	[illegible]
	100.00

All the articles in suit are generally dealt in by persons connected with the manufacture and sale of pigments, and they are staples of trade in that line of commerce. Nitrate of lead, however, is principally dealt in by wholesale druggists; metal dealers do not usually deal in any of these articles.

It was shown that the method of the manufacture of white lead has been substantially the same for upwards of twenty-five years.

The counsel for the defendant moved that the court direct the jury to find a verdict for the defendant on said facts, claiming that these articles were not, in law or in fact, manufactures of metal, within the meaning of the act of 1872.

20 And upon the foregoing facts the plaintiff asked the court to charge the jury as matter of law—

1st. "That if the jury find that any of the articles in suit are made of metal, and that metal is of chief value, they must, as to such articles, find for plaintiffs."

2nd. "That white lead, nitrate of lead, orange lead, and oxide of zinc, being made from metal, and metal being of chief value therein, are manufactures of metal, of which metal is of chief value, and that they must find for plaintiffs."

3d. "That the words 'manufacture of metal, of which metal is the component of chief value,' in the act of June 6, 1872, section 2, embrace all articles made of and from metal except 'percussion-caps, watches, jewelry, and other articles of ornament.'"

4th. "That the words 'manufacture of metal, of which metal is the component of chief value,' comprise all articles made from metal as the raw material of the manufactures, whether made by hand, art, or machinery, or as the result of a natural or chemical process, excepting 'percussion-caps, watches, jewelry, and other articles of ornament, and provided that metal be the component in them of chief value.'"

21 5th. "That the present form, condition, use, and commercial designation of the articles in suit are immaterial, and if they are made of metal, and metal be of chief value therein, and they are not 'percussion-caps, watches, jewelry, and other articles of ornament,' that they are entitled to ten per centum reduction of duty under section 2 of the act of June, 1872, and the jury must find for plaintiffs."

6th. "That the words 'manufactures of metal, of which metal is the component of chief value,' used in the act of June, 1872, section 2, are used in their ordinary and common signification, and not in any trade or commercial sense."

7th. "That the evidence shows, and it is undisputed, that metal is the component of chief value in nitrate of lead, white lead, oxide of zinc, and orange mineral, and as it also shows, and is undisputed, that they are made from metal as a raw material, that they must find for the plaintiffs."

8th. "That the act of June 30, 1834, entitled 'An act concerning the duty on lead,' (4th U. S. Statutes, 717,) has, in its proviso, recognized 'red and white lead, shot, sugar of lead, and litharge,' as 'articles manufactured of lead.'"

22 9th. "That in the tariff act of May 19th, 1828, section 1, subdivision 8, (4th U. S. Statutes, 271,) 'red or white lead, dry or ground in oil,' litharge and orange mineral, 'are classed for duty with lead and manufactures of lead.'"

10th. "That section 1, subdivision 6, act of April 27, 1816, (3d U. S. Statutes, 312,) in enumerating lead and its manufactures, classes them together, viz, 'lead in pigs, bars, and sheets, * * shot manufactured of lead, * * red and white lead ground in oil.'"

11th. "That similar classification of lead and its manufactures occurs in section 1, subdivision 5, act of May 22, 1824, (4th U. S. Statutes, 27.)"

12th. "That even if the articles in suit were paints, or had been classified as, or in connection with, paints in existing tariff laws, such fact or classification has no effect upon their character under the act of June 6, 1872, section 2, as manufactures of metal, of which metal is the component of chief value;" but to each and every one of said requests the court refused so to charge the jury, and to each and every one of which refusals so to charge, the plaintiffs then and there specifically excepted.

23 The court refused to instruct the jury as requested by the plaintiffs in each of said propositions, and there being no disputed question of fact in the case, informed the jury that in his opinion the articles in question had been classified in the tariff acts, not with reference to the material of which they were composed, but with reference to the use to which they were destined, and for which they were manufactured, and had been classed as paints, and were not, within the true construction and meaning of said acts, manufactures of metal, and directed a verdict for the defendant.

The court having refused to instruct the jury as requested by the plaintiffs in each and all of the propositions hereinbefore set forth, the plaintiffs' counsel excepted to such refusals, respectively, and also as to the refusal of said court as to each of said requests. They also excepted to the said instructions so given by the court to the jury. The jury returned a verdict for the defendant under the foregoing instructions of the court. And inasmuch as the said several matters do not appear by the record, the plaintiffs' counsel requested his honor, the judge
24 of said court, to allow and sign this bill of exceptions, and his
honor did, in pursuance of said request and of the statutes in such case provided, so allow and sign this bill of exceptions, containing the several matters aforesaid, at and during the term of the court aforesaid, to wit, at the October term, A. D. 1873.

N. SHIPMAN, *Judge*. [L. S.]

(Endorsed:) Filed April 3d, 1874.

25 Supreme Court of the United States.

HENRY MEYER AND GEORGE A. MEYER, PLAINTIFFS in error,
vs.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.
} In error. October term, 1874.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the said court at the Capitol in Washington, came the said plaintiffs in error, by Chase, Hartley & Coleman, their attorneys, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error, Chester A. Arthur, against the said plaintiffs in error, Henry Meyer and George A. Meyer; whereas by the law of the land the said judgment ought to have been given for the said
26 plaintiffs against the said defendant. And the said plaintiffs pray
that the judgment aforesaid for the error aforesaid, and other

errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs, may be restored to all things which they have lost by occasion of said judgment, &c.

CHASE, HARTLEY & COLEMAN,
Attorneys for Plaintiffs in Error.

Filed May 23d, 1874.

27 Supreme Court of the United States.

HENRY MEYER AND GEORGE A. MEYER, plaintiffs in error, *vs.* CHESTER A. ARTHUR, DEFENDANT IN ERROR.	In error. October term, 1874.

And afterwards, to wit, on the second Monday of October, in the same term, the said Chester A. Arthur, defendant in error, by George Bliss, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid, given may be in all things affirmed, &c.

GEO. BLISS,
28 *Attorney for Defendant in Error.*

Filed May 23d, 1874.

29 Circuit court of the United States of America for the southern district of New York, in the second circuit.

HENRY MEYER & GEORGE A. MEYER, PLFFS. in error, *vs.* CHESTER A. ARTHUR, DEFT. IN ERROR.	Bond for costs.

Know all men by these presents that we, George A. Meyer, of No. 62 West 19th street, in the city of New York; J. Seaver Page, of No. 345 5th avenue, in the city of New York; and Frederick W. Devoe, of Fordham, New York City, are held and firmly bound unto the above-named Chester A. Arthur in the sum of five hundred dollars, to be paid to the said Chester A. Arthur, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly, by these presents. Sealed with our seals, and dated the 30th day of April, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named Henry Meyer and George A. Meyer have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Henry Meyer & George A. Meyer shall prosecute their said writ of error to effect and answer all damages and costs, if they fail to make their said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEO. A. MEYER. [L. S.]
J. SEAVER PAGE. [L. S.]
FRED. W. DEVOE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 20 day of April, 1874, before me, as to Geo. A. Meyer.

JOHN A. SHIELDS,
U. S. Com. S. D. of N. Y.

Sealed & delivered, & taken & acknowledged, this 7 day of May, 1874, before me, as to J. Seaver Page & Frederick W. Devoe.

JOHN M. SHIELDS,
U. S. Commissioner S. D. of N. Y.

30 UNITED STATES OF AMERICA,
Southern District of New York, ss:

We, J. Seaver Page, of No. 345 Fifth avenue, in the city of New York, and Frederick W. Devoe, ot Fordham, New York City, being duly sworn, do*th* depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

J. SEAVER PAGE.
FRED. W. DEVOE.

Sworn to this 7th day of May, A. D. 1874, before me,

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

The foregoing bond is approved as to form and amount, and the sufficiency of the sureties. May 8th, 1874.

SAM'L BLATCHFORD.

(Indorsed:) Vol. , page . U. S. circuit court. Henry Meyer & al., plffs. in error, vs. Chester A. Arthur, deft. in error. Bond for costs on . , proctor. Filed this 9th day of May, 1874.

31 United States of America to Chester A. Arthur, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, 1874, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Henry Meyer and George A. Meyer are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, this eighth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

SAML. BLATCHFORD.

32 (Indorsed:) U. S. Supreme Court. Henry Meyer & al. vs. C. A. Arthur. Citation.

I admit due & timely service of a copy of the within citation, May 9th, 1874.

GEO. BLISS,
Atty. for Deft. in Error.

Filed May 9, 1874.

(Indorsement on cover:) No. 426. S. New York. C. C. U. S. Henry Meyer and George A. Meyer, plaintiffs in error, vs. Chester A. Arthur, collector of the port of New York. Filed 27th May, 1874.

REC. 426—3

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Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1874.

HENRY MEYER ET AL.,
Plaintiffs in Error,

vs.

CHESTER A. ARTHUR,
Defendant in Error.

Statement of the Case.

This action was brought to recover ten per centum of the duty exacted upon white lead, oxide of zinc, orange lead and nitrate of lead, imported by plaintiffs subsequent to August 1, 1872, the defendant being the collector of customs for the port of New York.

Plaintiffs, on the entry of said goods, were required by the defendant, as such collector, to pay the full amount of duty, under the laws in force before the Act of June 6, 1872 (Stats. at Large, vol. 17, page 230), without the reduction allowed in section 2 of said act, which provides that on and after August 1, 1872, there shall be a reduction of 10 per cent. upon the existing duty "upon all metals not herein otherwise provided for, and on all manufactures of metals of which either of them is the component part of chief value, excepting percussion caps, watches, jewelry and other articles of ornament."

The payments were made under protest, and the requirements of law relative to actions of this character have been complied with by the plaintiffs.

On the trial, evidence was given describing the process of manufacture of each of the articles imported.

See pp. 6–7 of the printed record.

These detailed descriptions show that lead is the raw material from which white lead, orange lead and nitrate of lead are manufactured, and zinc is the raw material from which oxide of zinc is manufactured.

The component materials of each of the articles were also established by chemical analysis proved on the trial, and in each article, metal (lead or zinc) was admittedly the component of chief value.

See pp. 7–8 printed record.

On the part of the defendant it was shown that the combination between the components of each of the above articles was a chemical one, and that, as the result of the manufacture, the lead or zinc was converted into new articles, differing in specific gravity and otherwise from the lead or zinc of commerce.

Evidence was also given tending to show that the goods were commercially paints, except nitrate of lead, which has a variety of uses, but never that of a paint.

Thereupon the defendant's counsel moved for a direction to the jury to find for the defendant, claiming that the said articles were not in law or in fact manufactures of metal within the meaning of the Act of 1872.

The plaintiffs' counsel also requested the court to charge the jury, as set forth in pages 9–10 of the printed record, who, refusing so to do (to which they duly excepted), charged the jury, "that, in his opinion, the "articles in question had been classified, not with reference to the material of which they were composed, "but with reference to the use to which they were destined and for which they were manufactured, and "had been classed with paints, and were not, within "the true construction and meaning of said acts, manufactures of metal, and directed a verdict for the "defendant." Plaintiffs' counsel duly excepted to this charge and direction of the court.

See page 10 printed record.

Assignment of Error.

We assign for error the refusals of the court to charge the jury as follows, viz.:

1st. "That white lead, nitrate of lead, orange lead and oxide of zinc, being made from metal, and metal being of chief value therein, are manufactures of metal, of which metal is of chief value, and that they must find for plaintiffs."

2d. That the words "manufactures of metal of which metal is the component of chief value," comprise all articles made from metal as the raw material of the manufacture, whether made by hand, art or machinery, or as the result of a natural or chemical process, excepting percussion caps, jewelry and other articles of ornament, and provided that metal be the component in them of chief value."

3d. That the present form, condition, use and commercial designation of the articles in suit are immaterial, and if they are made of metal, and metal be of chief value therein, and they are not percussion caps, watches, jewelry and other articles of ornament, that they are entitled to ten per centum reduction of duty under section 2, Act of June 6, 1872, and the jury must find for plaintiffs.

4th. That the words "manufactures of metal of which metal is the component of chief value," used in the Act of June 6, 1872, Section 1, are used in their ordinary and common signification, and not in any trade or commercial sense.

5th. That even if the articles in suit were paints, or had been classified as or in connection with paints in existing tariff laws, such fact or classification has no effect upon their character under the Act of June 6, 1872, Section 2, as manufactures of metal, of which metal is the component of chief value.

6th. We also assign for error his charge to the jury ."that, in his opinion, the articles in question had been "classified in the tariff acts, not with reference to the "material of which they were composed, but with reference to the use to which they were destined, and "for which they were manufactured, and had been "classed as paints, and were not, within the true construction and meaning of said acts, manufactures of "metal."

7th. We also assign for error his direction to the jury to find a verdict for the defendant upon the evidence.

See printed record, pages 9 and 10.

ARGUMENT.

1.

What is the true intent and meaning of the words in the Act of June 6, 1872, sec. 2, "manufactures of me-

"tals, of which either of them is the component part "of chief value."

As these words describe nothing, technically, they are evidently used in their ordinary sense, and not as terms of trade or art.

Lottimer *v.* Smythe, 17 Int. Rev. Rec., pp. 13, 14.

Manufactures of metals are of such diverse kinds, engaging the industry and skill of so many trades, that no one class of dealers can limit those words to its own productions.

To resort, then, to the meaning of the word "manufacture," given by lexicographers, we find it defined by Webster to be:

1st. The operation of reducing raw materials of any kind into a form suitable for use, by hand, by art or by machinery.

2d. Anything made from raw materials by the hand, by art or by machinery.

3d. To make or fabricate from raw materials by the hand, by art or by machinery, and work into forms convenient for use.

Worcester has similar definitions.

This court said in the leading case of Lawrence *vs.* Allen, 7 Howard, p. 793: "Yet what constitutes a "manufactured article? In some instances and for "some purposes it may be one kind of process per"formed on what is found in a natural state, and in "some another kind. Thus the juice of the maple, or "of the cane, is in some views manufactured, when it is "made into molasses or syrup, and in others when again "made into sugar or spirit from molasses. And so the "juice of the grape is in one sense manufactured when "converted into wine, and in another when made into

" brandy. And lye from ashes when boiled down to " potash or pearlash is manufactured into them. Here " the juice or sap of the india rubber tree, while " liquid or in its milky state, whether then called " caoutchouc or some other name, is still a natural " substance and in its natural form, and, in one sense " and to a certain extent, its being hardened and " changed in color, no less than consistency and bulk by " fire and evaporation, whatever new form it may then " be turned into is a manufacture from animal milk, as " tar from turpentine and rosin from tar." * * * And again, on p. 794: " Going to more technical definitions, and to first principles, such a process to " make the shoe is making an article by the hand, " which was once the literal meaning of the word " manufacture, or *manu factum*, and in the more modern idea attached to the word, it is making an article " either by hand or machinery into a new form, " capable of being used and designed to be used in ordinary life."

Also in Corning *v.* Burden, 15 How., p. 267, *et seq.* " Where the result or effect is produced by chemical " action, by the operation or application of some element or power of nature, or of one substance to " another, such modes, methods or operations are " called processes. * * The arts of tanning, dyeing, " making water-proof cloth, vulcanizing india rubber, " smelting ores and numerous others are usually " carried on by processes as distinguished from machines."

* * " A has discovered that by exposing india " rubber to a certain degree of heat, in mixture or connection with certain metallic salts, he can produce " a valuable product or *manufacture*: he is entitled to " a patent for his discovery as a process or improvement in the art, irrespective of any machine or mechanical device."

Bouvier, vol. 2, p. 101, defines manufactures as follows, viz.: " With us it has been defined to be any new

" combination of old materials, constituting a new
" result or production in the form of a vendible
" article, not being machinery."

See also 2 Barnwell & Alderson, 345, 350.

Schriefer *v.* Wood, 5 Blatch., 215.

White lead, oxide of zinc, etc., are therefore *manufactures*, and, being made directly from raw lead or zinc by a continuous process, are manufactures of metal, that being the raw material from which they are produced. Metal is chief value (see record, p. 8).

They are not only made from metal, but contain nothing else except properties derived from the atmosphere. They also form one of the most important branches of manufacture in which metals are used as raw materials.

Why exclude them from the benefits of the section?

2.

The objection of defendant that the articles in suit are not in a metallic form, and have been converted by oxidation into substances in which the identity of the metal is lost, is, under the above cases and definitions, immaterial. Are they any the less made of metal, and is not metal the component of chief value entering into their manufacture?

Refined distinctions in the construction of tariffs have always been discountenanced. This court said—in two hundred chests of tea (9 Wheaton, 438)—that the law "did not suppose our merchants to be naturalists, or geologists, or botanists."

In Schriefer *v.* Wood, 5 Blatch., 215, this very question was discussed, and it was held that the words "manufactures of bone" included bone-black, although the bone was converted by calcination in the process into a new article, having none of the properties, qualities or characteristics of bone.

This case is exactly in point and conclusive, and was concurred in by the court below in the present case.

The reduction of duty made by section 2, Act June 6, 1872, is upon classes of goods with sole reference to the component material of chief value.

Congress did not pick out articles one by one from the enumerations of former laws and reduce the duties on them nominatim. They foresaw that such a course would result in inevitable omissions, and that goods on which the reduction was designed to operate would escape notice. They did not wish either to confuse by a multitude of particulars, and hence used comprehensive terms, selecting classes of articles according to the chief material entering into their manufacture.

The reduction was called, in the expressive language of the time, a "horizontal reduction," that is, one running through the tariff, in contradistinction from a reduction upon specific articles. The metal, cotton, wool and glass clauses in former laws each covered several pages of technical enumerations, with several hundred separate descriptions, and yet the reduction of duty is here effected in a single section.

Act June 30, 1864, Secs. 3, 4, 5, 6 and 9;
13 Stats., p. 202 and following.

The language of the section is unmistakeable, viz.: "On all manufactures of cotton, of which cotton is the "component part of chief value." * "On all wools, "hair of the alpaca, goat and other animals, and all "manufactures wholly or in part of wool, &c." * "On all iron and steel, and all manufactures of iron "and steel, &c." * * "On all metals, &c.; on all "manufactures of metals, &c." "On all manufactures "of india rubber, gutta percha or straw. On glass "and glassware, &c." * * "On all leather, &c.; and "on all manufactures of skins, bone, horn, ivory and "leather."

The test of the reduction is of what are the articles made? What is the leading material in their manufacture? As white lead, oxide of zinc, &c., are admittedly made from lead or zinc, which are metals, how can the reduction of duty claimed be denied without ignoring both the spirit and letter of the act?

4.

The Act of 1872 is entitled an "Act to *reduce* duties on imports," which declared purpose must be considered in interpreting its provisions (Smythe *v.* Fisk *et als.*, No. 399, October Term, 1874; U. S. *v.* Fisher, 2 Cr., 336; U. S. *v.* Palmer, 3 Wheaton, 631). As when the act was passed the industrial interests of the country called for reduction of taxes, and as the bill was *remedial* responding to the call, the court must so construe the law as to carry out its purpose.

To exclude from its benefits an important interest using metals as the base of manufacture, would defeat its purpose, which is to reduce duties on "metals and manufactures of metals."

5.

"All metals, and all manufactures of metals, &c.," are provided for in section 2, with certain exceptions, which do not include the articles in suit. When Congress has made exceptions, it negatives the idea of any *other* exceptions than those directly made.

Tinkham *v.* Tapscott, 17 New York, 141.
Bend *v.* Hoyt, 13 Peters, 271, 272.

Having made other exceptions, and not having excepted the articles in suit, the conclusion is sure that Congress intended to include them.

Bend *v.* Hoyt, 13 Peters, 273.

6.

Observe the sweeping character of the language used; the use of the word "all" which heads every paragraph but one; also that the articles excepted from the reduction are named specifically and not by classes; also the use of the words "herein otherwise provided for," as applied to leather and metals, which directly enacts that no leather and no metal shall escape reduction unless otherwise provided for specifically in the same act.

The intention is plain not only to include all manufactures containing the components named, but to name all excepted articles either expressly or by reference to them as "otherwise provided for" in the Act of 1872. Internal evidence, from the language employed, of the scope of the section could not be stronger.

The intention of Congress in framing a law, when fitly deduced, has always been controlling with this court.

"The intent of the law makers is the law."

Smythe *v.* Fiske *et als.*, No. 399, October Term, 1874. A thing within the intention of the makers of the statute is as much within the statute as if it were within the letter.

Zouch *v.* Stowell, Plowden, 366.
U. S. *v.* Freeman, 3 How., 565.
Telegraph Co. *v.* Eyre, 19 Wallace, 427.
Atkins *v.* The Disintegrating Co., 18 Wallace, 301.

7.

The charge of the court, assigned for error, is, "that the articles in question had been classified in the tariff acts not with reference to the material of which they were composed, but with reference to the use to which they were destined and for which they were manufactured and had been classed as paints, and were not, within the true construction and meaning of said acts, manufactures of metal."

This is not so. In no tariff act have the articles in suit been described by reference to their use, but always under their own proper names.

White lead and oxide of zinc are excluded by name from classification as paints, and painters' colors, in sec. 5, Act July 14, 1862 (12 Stats., 547), the law in force at the date of this suit. White lead was, when this action began, primarily dutiable under sec. 11, Act, June 30, 1864 (13 Stats., 212), which is a miscellaneous section placing white lead and litharge between honey and percussion caps.

Secs. 8 and 9, Act Mar. 2, 1861 (12 Stats., 182) were the sections under which duties were then collected on oxide of zinc and nitrate of lead, and the metals lead and zinc.

Sec. 9 is not a paint section, but contains a variety of articles dutiable by specific names. And it immediately follows the one providing for lead and zinc, from which the articles are manufactured.

The Act of August 5, 1861, sec. 1 (12 Stats., 292), classes white and red lead in immediate contiguity with lead, viz., "on lead in pigs or bars, one dollar "and fifty cents per hundred pounds; in sheets, two "dollars and twenty-five cents per hundred pounds; "on white lead, dry or ground in oil, and red lead, two "dollars and twenty-five cents per hundred pounds."

Earlier tariffs do the same. The Act of June 30, 1834 (4 Stats., 717), entitled "An Act concerning the duty on lead," has in its proviso recognized "red and white lead, shot, sugar-of-lead and litharge" as "articles manufactured of lead," placing shot and white lead in the same category.

In the Act of May 19, 1828, sec. 1, subdivision 8 (4 Stats., 271), red or white lead, litharge and orange mineral are classed for duty with lead and manufactures of lead.

Section 1, subdivision 6, Act April 27, 1816 (3 Stats. 312), in enumerating lead and its manufactures, names, "lead in pigs, bars and sheets, * * shot manufactured of lead, * * red and white lead ground in oil." A like classification occurs in Section 1, Subdivision 5, Act May 22, 1824 (4 Stats., 27).

As to nitrate of lead, the court was clearly wrong in directing a verdict, because evidence was given that it was never used as a paint. (See Record pp. 8-9.)

The court supposed that all paints and *pigments*, which he confounds, were set apart in the tariff as such, when the fact is that they were dutiable under miscellaneous sections by their own proper names, except the finer colors grouped together in section 5, Act of July 14, 1862 (12 Stats., 547), from which white lead and oxide of zinc are by name excepted.

It is, however, under the foregoing considerations as to the character and purpose of section 2, Act of June 6, 1872, immaterial whether or not the goods in suit had been classed in former laws by use or as paints. The question is, what are the goods made of, not what they are to be used for. They are entitled to the reduction because made of metal, and not deprived of it unless excepted in the law. If they are not "manufactures of metal" because they are *paints*, then no article called by a distinct commercial name in previous tariffs, such as cutlery, hardware, hollow-ware and bronze powder, &c., can be under section 2 a manufacture of metal, nor wearing apparel, a manufacture of wool, or shoes, a manufacture of leather, or cotton hosiery, a manufacture of cotton, so that the scope of the section would be limited to the general clauses of former laws, which are only employed to sweep up articles omitted in the specific enumerations.

Congress excluded from the reduction "percussion caps, watches, jewelry and articles of ornament," evidently supposing that without such exception those articles would be included, and yet none of them are *commercially* known as manufactures of metal, nor have jewelry or watches ever been classed for duty but under their own proper names.

Why did Congress except "percussion caps, watches, jewelry, &c.," if they had never been classed in the tariff with manufactures of metal? Because it intended to cover all manufactures of which metal was chief value irrespective of former designations. Thus percussion caps, watches, jewelry, &c., would receive ten per cent. reduction of duty unless expressly excepted and a convincing reason for their exception appears.

Even if white lead, oxide of zinc, &c., had theretofore been classified by use, how can that affect their classification under section 2, Act June 6, 1872, which describes no article by its use, but every article by leading component material. Exclude every article described in former laws by use and commercial designation, and how much is left for section 2 to operate on?

The court erred in both his facts and law, and had no authority to direct an absolute verdict on the evidence.

8.

We must come back to the Act of 1872. What was the intention of Congress in passing it? Aside from the considerations above presented, we have express proof of the legislative intent from the journals and debates in Congress while the Act was under consideration, and that Congress had in mind a reduction upon these very articles. That executive documents and the *Congressional Globe* may be referred to by courts to throw light upon the meaning of a statute.

See U. S. *v.* Collier, 3 Blatch., 335.

Also see Arthur *v.* Richard *et al.*, October Term, '74, where this court referred to the report of the Finance Committee of the Senate to explain the meaning of a statute.

1st. As to the circumstances and condition of the country in view of which the Act of June 6, 1872, was passed.

Just prior to the final vote in the Senate, Mr. Conklin said: "I have said before, and I repeat, that I know of nothing lying within the domain of our legislative power, now, so just, so important, so urgent, so imperative, as to take from the hands of labor the weights by which they are burdened, to emancipate the people from the unnecessary and excessive taxation which rests upon them."

Vide Congl. Globe, 2d Session, 42d Congress, 1871–'2, part 5, page 4217.

2d. As to the general sweeping effect of the 2d section of the Act of June 6, 1872, Mr. Dawes, chairman of the House Committee on Ways and Means, and also chairman of the House Committee of Conference on the bill, in explaining the bill to the House prior to the final vote thereon, said :

"Almost everything comes under a ten per cent. reduction. There are exceptions on both sides; some few articles are excepted from the application of the ten per cent. reduction and some are subjected to a greater reduction."

Ibid, page 4206.

The few exceptions from the ten per cent. reduction were, "watches, jewelry and other articles of ornament."

3d. As to the application of section 2 of the Act of June 6, 1872, to the specific article of "white lead."

Mr. Sherman, chairman of the Finance Committee of the Senate, and also the chairman of the Conference Committee on the part of the Senate, speaking upon the recommendation of the Senate Finance Committee to grant a greater reduction on pig lead, &c., than that afforded by the ten per cent., or 2d section of the act, said :

Ibid, page 3901.

"The Committee on Finance therefore report a reduction of one half a cent per pound on lead, reducing it to the highest rate it was from 1842 till 1864. It seems to me that while we are repealing taxes we ought to throw off a reasonable amount on this interest. *Besides we have manufacturers of lead, not only of* WHITE LEAD, *but sheet lead at a reduction of ten per cent. all around.* I will say that this classification of lead was made after listening to persons interested both in favor of the reduction on lead and in favor of the manufacturers of lead, we think it is about a fair adjustment of that controverted question."

It will thus appear that Congress *intended* to reduce the duties on "*white lead*" ten per centum under the provisions of law relied upon by the importers.

The other articles in suit are of like nature as white lead, and the same reason for exemption obtains.

SUMMARY.

Under what hypothesis can the articles in suit be denied the reduction of duty claimed? Not from the words of the statute, "manufactures of metal, of which metal is chief value," for they distinctly include them; not because they are excepted by the statute, for the statute has made exceptions which do not include them. Not from the intention, because not only from the words used, the best indication of the legislative intent, but also because it appears affirmatively from the record of the debates in Congress that white lead and all articles made from metal were within its provisions.

We ask that the judgment below be reversed.

EDWARD HARTLEY,
Of Counsel for Plaintiff in Error.

E. Wells Sackett & Bro., Printers, 56 & 58 William St., N. Y.

U. S. Supreme Court

HENRY MEYER, ET AL,
Plaintiffs in Error.

vs.

CHESTER A. ARTHUR.

October Term, 1875.
No. 183.

Brief of Plaintiff in Error in Reply.

Counsel for the Government begin by assuming that the only question is as to the true construction of the words used in the Act of 1872, "All Manufacturers of Metals of which either of them is the component part of chief value."

It will be seen by page 10 of the record and pages 3 & 4 of our brief, that the plaintiffs' counsel duly excepted to direction to jury to find a verdict for defendants and have assigned it for error.

The important question remains whether the Court could, as matter of law, say that the articles in suit were not "manufactures of metal" upon the evidence.

There was evidence here that the plaintiffs imported oxide of zinc, white lead, nitrate of lead, and orange lead, and paid the duty demanded by the Collector; that the Collector refused the 10 per cent. reduction claimed under the Act of 1872; that plaintiffs made due protest and appeal against the exaction, and brought suit within the proper time; the amounts due (under their theory) were proved. The manufacture of each article imported was proved; it was shown, that each was manufactured of metal, that lead or zinc was the raw material from which they were made. An analysis of the articles was shown; proving that lead or zinc was the chief component. It was also proved that metal was the component in each article of chief value.

That was sufficient to take the case to the jury.

Where there is evidence before the jury—whether it be weak or strong—which does so much as *tend* to prove the issue on the part of either side, it is error if the Court wrest it from the exercise of their judgment. It should be submitted to them under instructions from the Court.

Hickman *v.* Jones, 9 Wall, 197, 201.
Schuchardt *v.* Allen, 1 Wall, 369, 370.

In the latter case citing Parks *v.* Ross, 11 How., 362, Swayne, J., says that an instruction to the jury to find absolutely is equivalent to a demurrer to evidence which admits not only the facts stated therein, but also every conclusion that may be drawn from it reasonably and fairly by the jury.

"If there be *some* evidence tending to support the averment its value must be submitted to the jury with proper instructions from the Court. If this were not so, the Court might usurp the decision of the facts altogether and make the verdict but an echo of their opinions."

* * * It is the duty of the Court to construe written instruments, but the application of their provisions to external objects is the peculiar province of the jury.

Richardson *v.* City of Boston, 19 Howard, 269.

In Barney *v.* Smeider, 9 Wall, 248, ; 252-3, the Court, after deciding that the cause was improperly withheld from the jury, say that questions like the present (that was a revenue case) are questions of mixed law and fact. That the Court can only know by evidence what kind of goods were assessed by the collector, and this at once dispels the idea that the case could in any sense present an abstract question of law.

Also in R. R. Co. *v.* Stout, 17 Wallace, 657.

"Though it is true in many cases that where the facts of a case are undisputed, the effect of them is for the judgment of the Court and not for the decision of the jury. This is true in that class of cases where the existence of such facts come in question rather than where deductions or inferences are to be made from them. And whether the facts be disputed or undisputed, if different minds may honestly draw different conclusions from them, the case is properly left to the jury."

The propriety of these rulings can be seen from the inspection of this record, where the Court below gives the *conclusions of fact* from the testimony as they appeared to him, which is the province of the jury, and from which testimony the jury might have drawn different conclusions. Would not the jury have been authorized to find for plaintiffs on the evidence of the manufacture of the articles in question, and the analysis showing metal to be of chief value. That metal was in those articles, and that they were manufactures of metal, of which metal was the component part of chief value?

The evidence stated that "metal dealers do not usually deal in these articles," implies that they sometimes do, from which certainly the jury might draw an inference.

As to second point made in defendant's brief, it certainly is of no consequence what the substances are, chemically speaking, unless the law shows that the words are used in a chemical sense, because if the descriptive words are used either in their natural or commercial sense, then scientific terms have no importance in determining the meaning.

The case of Maillard *v.* Lawrence, 16 How., 261, is not in favor of the principle for which it is cited. In that case the ordinary meaning of the word wearing apparel was held to override its restricted use among merchants. It belongs to the same class of authorities as Binns *v.* Lawrence, 12 Howard, 7, 18, 19.

But immediately after making the point, that in the Tariff Acts commercial language shall govern, he agrees with plaintiffs, "that the words to be continued are not used technically. This puts commercial designation out of the case. But he seems no better satisfied with the definitions of the lexicographer, which he says do not solve the difficulty. But is there any doubt of the meaning of the definition "anything made of raw materials" as applied to manufacture? The difficulty suggested is one of misquotation or of confounding the manufactured article with the process by which it is made—one being a result and the other the instrumentality by which it is produced. The words he cites, "the manufacture of cloth" refer to the *art* of making cloth; the "*manufacture* of the country" to the industry of the country," "we manufacture our wool" to the manipulation of wool. Does he mean to say that these are exhaustive examples of the meaning of the word manufacture? Do they not look simply and only to the word manufacture as an art, and not, as in the law, to the result of that art, the thing made by it. So partial a view cannot mislead, for it only takes that meaning of the word manufacture which cannot apply to a tangible object, but which refers to the *means* by which it is produced. Is oxide of zinc or white lead a *process?*

The case of Lawrence *v.* Allen, 7 How, 793, did decide that India rubber shoes were manufactured, contrary to the assertion of counsel, for which see pages 796–7 of that volume.

Next counsel cites Lottimer *v.* Smythe, 17 Int. Rev. Rec. 13, which appears to have no significance on the point cited, because while the term "silks" may or may not be a commercial term, the words "manufactures of silk not otherwise provided for" were not claimed by any one to be a commercial term, and under that designation "crapes" were held to be dutiable. Do the words "manufactures of metal of which metal is the component part of chief value" belong to the same *class* of words as "dress and piece silks," a technical term, or to the same class of words as "manufactures of silk not otherwise provided for" a natural term?

The case of Duden *v.* Murphy, 18 Int. Rev. Rec. 174, has not yet been acquiesced in, and the question is now before this Court on a writ of error taken by the government. There it may be said that the question was whether the goods were dutiable as thread lace or as silk lace, and the question was left to the jury.

Elliot *v.* Swartout held that wool and worsted were different things in commerce, and that the words manufactures of wool would not therefore cover worsted, though worsted was combed wool. There is no such question here.

The counsel has already admitted that the words manufactures of metal in the Act of 1872 are not to be construed technically as wool and worsted were in the case of Elliot *v.* Swartout.

And here we may say that under the section of statute in dispute the Treasury Department has decided that manufactures of worsted were entitled to 10 per cent. reduction as manufactures of wool because of the peculiar and sweeping language of the Act of 1872 and the evident intention of Congress.

Decisions of Treasury Department 1872, page 259 (1178).
Ibid, page 262 (1185).

Again he says metals are elementary mineral substances, and, so as soon as they combine with aught else, they cease to be metals. This is the abstract conception of what a metal is.

Metals, as articles of commerce and of common life, are not chemically pure. McElrath says in his Commercial Dictionary: "an iron which contains from 2 up to 5½ per cent of carbon, is known as cast iron, when it contains less than about half of 1 per cent., it is known as wrought or malleable iron." So of other metals—and yet commercially, and as used in the language of ordinary life, cast iron and pig iron, are metals and iron.

There is another class of articles recognized in the tariff, and in common life as metals, and that is the class of alloys like brass, bronze, pewter and german silver, none of these are chemical metals, the individuality of each metal is as completely eclipsed as in oxide of zinc or white lead, yet they are metals and so dutiable in the tariff.

But he goes on, nor is white lead a manufacture of lead within the meaning of the tariff, for it is a distinct article in which the lead of commerce is not present. Here we are on chemical ground again. Manufactures of lead, within the meaning of the tariff and within the meaning of chemistry, do not concur.

The tariff recognizes as metals, ores of metal and speaks of the ore as *containing* so much metal and levies duty on the ore as on the metal, and it speaks of metal in different forms just as we speak of it as lead ore, pig lead, white lead, sheet lead and red lead.

Revised Statutes, p. 470, Title 33, Schedule E.—Metals.

Copper imported in the form of ores, three cents on each pound of fine copper contained therein. Regulus of copper and on all black or coarse copper four cents on each pound of fine copper contained therein. Lead ore one and half cents per pound.

The instances in which white lead has been recognized as a manufacture of lead are pointed out in our original brief.

The refinements of defendant are ignored in the tariff as well as in the cases of Lawrence *v.* Allen, and Scheifer *v.* Wood, before cited.

The law does not limit the words component part of chief value to a visible component. The word component means an element going to make up; the word part means less than the whole, not a *piece.* We paraphrase the law manufactures of metal of which metal is the element of chief value entering into its composition.

The law was designed to operate on articles in the production of which metal was used. White lead is such a product. Every time the duty has been changed on pig lead for years, the duty on white lead has been adjusted accordingly.

Again, he says, that he has dwelt upon white lead because all the others are further removed by additional chemical processes from their metallic bases. The record shows the contrary (See manufacture of oxide of zinc, p. 6).

He goes on, plaintiffs lay stress upon the fact that the articles in dispute were not specially excepted, and says that this was unnecessary because they were not included in the general terms of the law. Then he says they were not within the commercial sense. It has been admitted that the words of the Act of 1872, were not to be construed technically, and it has been so shown. Certainly, they are within the natural meaning.

Counsel agrees that the intent of the act is determined not only from the language employed but the subject matter and connecting and surrounding circumstances.

Here the context is one containing new and general terms limited only by the natural meaning of the words. The act was entitled to reduce duties. The state of the country at the time demanded relief from oppressive taxation. The proceedings in the House and Senate, where the Chairmen of the Committees, spoke; not as members to discuss the bill, but to explain what it was, with all the authority of their official position, so as to enable the legislators to give an intelligent vote, these facts certainly are surroundings to be considered by a Court on a question of interpretation.

Without such aid, what can we do with the terms used, "manufactures of metal, of which metal is the component part of chief value. These words exclude all manufactures wholly of metal, that is, where metal is the only component. Such a construction, however justified by the language, defeats the intent of Congress as gathered from the context and surrounding circumstances.

In speaking of iron and steel as different things in the act of 1872 and separating them from metals, Congress has only followed the practice in former acts.

Next he says that the Court finds that all the articles were generally dealt in by persons connected with the manufacture and sale of pigments except nitrate of lead.

Who authorized the Court to make any findings? Or to give a summary of the testimony when he took the case from the jury? He should have returned the evidence here, and not his view of it.

Again he says that metal dealers do not usually deal in these articles? If they deal in them at all, it is a question for the jury, under his view of the case, under ours it is immaterial whether they did or not.

Do metal dealers deal in cuttlery, scissors, stoves, percussion caps, jewelry, quicksilver, cork screws; umbrella frames, metal buttons, gas fixtures, pins, hair pins, shot, needles, thimbles, bullion, bronze, powder, Dutch metal, bronzes, steel pens, sewing machines, door plates, hand bells, spoons, knives and forks, spectacle frames, surgical instruments, musical instruments, locks and keys, or swords.

There is scarcely a trade that does not employ manufactures of metal, and the attempt to confine the reduction of duty to what metal dealers use is absurd.

As to the Congressional Globe:

The suggestion of fact in defendant's brief is that Mr. Sherman's remarks were made with reference to a proposition that never did become a law.

This is not fairly stated. Mr. Sherman, an officer of the Senate, being chairman of its Finance Committee, made the official report on the bill. The second section, now under examination, was in certain respects amended by the committee, and so far as pertains to the case at bar, was enacted as reported by him *verbatim et literattm* into the existing statute.

In reporting it he stated as a fact that it granted a reduction on *White Lead*, which grant had been made deliberately and intentionally.

Upon this fact he in part based the reasons of the Committee for proposing a greater reduction upon crude lead, lead ore, &c. This greater reduction was not enacted into the law but the *White Lead* reduction was so enacted.

The case cited by defendant (Aldridge *v.* Williams, 3 How, 1–24) was decided in 1844 and arose upon the Act of 1833, at which date no *verbatim* reports of Congressional proceedings existed. The *Globe* had not then been established. Hence the record of the debates was imperfect and of no high character as evidence. But in 1852 Congress passed the following, vide 10 Stats. at Large, page 147:

JOINT RESOLUTION OF AUGUST 6, 1852.

A Joint Resolution providing for the Distribution of the Laws of Congress and the Debates *thereon*,

With a view to the cheap circulation of the Laws of Congress, *and the debates contributing to the true interpretation thereof*, and to make free the communication between the representative and constituent bodies.

Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the present session of Congress the Congressional Globe and Appendix which contain the laws and the debates thereon shall pass free through the mails so long as the same shall be published by order of Congress: Provided, That nothing herein shall be construed to authorize the circulation of the *Daily Globe* free of postage.

Approved Aug. 6, 1852.

The Courts thereafter recognized the *Globe* as containing an official report of the debates "contributing to the true interpretation of the laws of Congress," as it was clearly intended by Congress that they should do.

Thus in the case of the U. S. *v.* Collier, decided by Judge Betts in 1855, the Congressional Globe was cited, and this case was affirmed by the Supreme Court which was divided on it, probably not divided however on this particular point. For in the case of the Dubuque and Pacific R. R. Co. *v.* Litchfield (*Dec. Term*, 1859): 23 How., 66.

(Attorney General Black, was of counsel for U. S., intervening against plaintiff in error) and contended, p. 72–3: "I admit that this, like every other statute, must be interpreted *ex viceribus suis*, with the aid of such lights as may be shed upon it by known historical and geographical facts, together with the authority of those officers, whose duty it has been to interpret it heretofore. Where Congress has said one thing plainly and distinctly in a law passed and enrolled, it cannot be modified, or in any manner changed by proof, however clear that the Committee which reported the bill, or any other member of the body, or even all of them together, meant to say a different thing.

The Court say:

Page 84, "and although this depends on a true construction of the act, still it becomes necessary to give a brief historical statement of the proceedings before the Executive Department respecting this claim, extending through more than ten years, those proceedings being relied on either to conclude the title, or to control the construction of the act of Congress.

Then follows a long and detailed statement of the acts of the executive officers.

Page 86—the caption of the act under consideration, is relied on by the Court as aiding the interpretation; page 87—the Court cites as authoritative proof, the proceedings in the House of Representatives, the introduction of the bill by Mr. Dodge, delegate from Iowa Territory, *the report of the Committee on Public Lands*, and on page 88, says: "The *bill No.* 106, *as reported*, was *passed into the law before us*.

In 1860, July 13, Mr. Attorney General Black, *vide* 9 Opinions Attorney General, page 438, commenting on the points decided by this case, in which it will be remembered he was of counsel, says:

"But I adhere to the opinion, which I have often expressed, that the intent of the law is not to be learned by ascertaining the thought that may have been in the minds of those who passed it, *unless the same thought is expressed in the law* itself. The legislative department speaks to us only through the statute-book, and this law, like others, must be interpreted *ex visceribus suis.*

It is true that the opinion of a Senator or Representative is entitled to respect as some authority for the meaning of the *words actually used in the enactment.* To that extent the Supreme Court regarded authority of that kind in the case of Litchfield *v.* the Railroad Company, decided at the last term."

The Congressional Globe being properly before the Court, what weight is to be given to the debates? In Aldridge *v.* Williams, there was a propriety of adhering to the exact text of the statute as passed, and, in excluding any extrinsic evidence from the debates, if such was obtainable (as it was not), from the consideration of the Court, because it is a matter of history that every shade of opinion came out in those debates—party spirit was high.

The Tariff controversies of the parties of Clay and Calhoun, have never been equalled in this country. The legislation was *compromise* legislation, and there would have been neither safety nor propriety in transferring the details of the controversy from the Halls of Congress to the Courts of Justice.

And in no case, we apprehend, would it be admissable to violate the plain positive words of a statute upon the evidence of the debates.

But the case at bar is different from such cases. The debates here show in a clear, satisfactory and convincing manner, the full meaning of the legislature embodied by them in the actual words of the statute. They thus become the spectacles of the Court, and show more clearly what *is* in it, but they show nothing that is *not* in it.

EDWARD HARTLEY,
Of Counsel for Plaintiff's in error.

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EDWARD HARTLEY,
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In the Supreme Court of the United States.

OCTOBER TERM, 1875.

HENRY MEYER ET AL., PLAINTIFFS IN ERROR, *vs.* CHESTER A. ARTHUR, COLLECTOR	No. 183.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the Defendant.

In the Supreme Court of the United States.

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HENRY MEYER ET AL., PLAINTIFFS IN ERROR, *vs.* CHESTER A. ARTHUR, COLLECTOR.	No. 183.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the defendant.

The only question is whether or not white lead and the other articles imported by the plaintiffs are manufactures of metals, or of which metals are the component part of chief value "*within the true meaning and construction* of the act of June 6, 1872," and of the tariff of which it is amendatory. If they are not, then the instructions requested were properly refused and that given was *substantially* correct, it being entirely immaterial, in that case, that nitrate of lead was not excluded when speaking of paints.

It is of no consequence what these substances are, chemically or scientifically speaking, unless they are also classified commercially in the same way as in chemistry or science, for it is, primarily, the commercial language, designation, meaning, and classification that is adopted in tariff acts, "although it may not be scientifically correct." (United States *v.* Sugar, 8 Peters, 279; Elliott *v.* Swartwout, 10 Peters, 151; Two hundred chests of tea, 9 Wheaton, 438; Curtis *v.* Martin, 3 Howard, 109; Lawrence *v.* Allen, 7 Howard, 793–'4; United States *v.* Breed, 1 Sumner, 159, 163; United States *v.* Sanchet, Gilpin, 273; Maillard *v.* Lawrence, 16 Howard, 261.)

We quite agree with the plaintiffs, that the words to be construed are not used technically.

And though the definitions of the lexicographer may be correct indications of the meaning of the word, we have then only transferred and not solved the difficulty, if any such first existed; for we must next inquire what he means by "anything made from raw materials." He explains it by his quotations, thus: "the manufacture of cloth;" "a coarse kind of canvas, the manufacture of the country;" "we manufacture our wool," and these are *all* the illustrations he gives in my edition (1870) of the book, none of them being an instance of the raw material being subjected to a chemical change, *a negative pregnant.* As stated in Corning *v.* Burden, 15 Howard, 267, a patent and not a tariff case, where a result is accomplished by chemical action, it is called a *process.* In that case the puddler's balls did not change the chemical condition of the iron; it was compressed into blooms.

The leading case of Lawrence *v.* Allen, 7 Howard, 793, says that "for some purposes" a manufacture may be one kind of process and in some another kind. After giving illustrations the court decide that for *tariff* purposes, the India rubber in question was *not* a manufacture, though actually as much so as obtaining tar from turpentine and rosin from tar.

In Lottimer *v.* Smythe, 17 Int. Rev. Rec., 13, the question was whether or not certain goods, imported in the piece, and of silk material, were dutiable as "piece silks." They were generally called "crapes," and the testimony was contradictory as to their being also known commercially as silks. Judge Woodruff told the jury that "if the goods in question are not *in commercial language known* as silks, the plaintiff is entitled to recover; but if they are, the defendant is entitled to your verdict." The *fact* of the articles being silk, imported in pieces, was not denied; but it was denied that they were known in commerce by that designation. So in Durden *v.* Murphy, 18 Int. Rev. Rec., 174, the jury were told that "the plaintiffs insist that their goods are not known in trade and commerce as silk lace; and they claim that the question to be here determined does not depend upon the mere fact that they are laces made of silk. *In this they are correct. The amount of duty is to be determined by the commercial designation.*"

These decisions simply follow Elliott *v.* Swartwout, 10 Peters, 137, where this court held that wool after being combed into worsted, became a distinct article under the tariff laws; so that worsted shawls were not manufactures of which wool was the component of chief value. Taney, C. J., accordingly ruled the same way as to worsted hearth-rugs, in Riggs *v.* Frick, Taney C. C. Rep., 100. We deem these decisions decisive of the present.

METALS are *elementary* mineral substances; so soon as they combine with aught else, they cease to be metals. Nor is white lead a manufacture of lead, within the meaning of the tariff act. It is a distinct article, in which the lead of commerce is not present. In white lead, there is no lead. (Record, p. 7, folio 15, and p. 8, folio 18.) It is carefully extracted, after exposure for months to acids, under the peculiar conditions detailed. By reversing the process, burning out the carbon and oxygen, lead can be reproduced, and the article cease to be white lead; but so long as it continues white lead, the lead of commerce does not appear in it. True, white lead is produced *from* lead, but it is not a manufacture *of* lead. If chemically tested, a multitude of articles would be found to possess a metallic basis or ingredient, but they could not justly, for that reason only, be considered as within the meaning of the act of June 6, 1872, making the 10 per cent. reduction here claimed.

In the chemical processes resorted to to make white lead, all the merchantable and commercial characteristics of the metal lead are destroyed. By the application of heat, acid, and the presence of the other appliances named in the record, (p. 7, folio 15,) chemical action is produced and continued for months until the elements combining by their elective affinities result in the complete destruction of the metal lead as a merchantable commodity, and the production of an entirely new article, scientifically described as a "carbonate of the oxide of lead." This product does not, however, become an article of commerce until it has been ground into a fine powder, sifted, and washed, when it becomes a pigment and is used and dealt in solely as such, either as a dry powder or in a paste with oil.

We have dwelt upon this article because all the others are still further removed, by additional chemical processes, from their metallic bases; so, of course, if white lead is not subject to the 10 per cent. reduction they would not be. There was no sufficient evidence adduced by the plaintiffs that the articles in question were, in a revenue sense, "manufactures of metal," to require the submission of the testimony to the jury. The raw metal, under the tariff laws, is pig lead; lead in form designed for manufacture, and as purchased by manufacturers of lead. A manufacture of that metal would be some article (like lead pipe) wrought up for a specific purpose, in the construction of which lead, *as an elementary metal*, is a component. That such is the case is evident from the exceptions in the section, *i. e.*, "percussion-caps, watches, jewelry, and other articles of ornament," and the proviso as to wire-rope, &c., (17 Stats., 232.) The plaintiffs lay stress upon the fact that the articles in dispute were not specially excepted. We reply that this was unnecessary because they were not included in the general terms to which the exception was made. There was no occasion to except them if they were not within the *commercial* sense of the preceding general clause. And the same remark applies to the use of the word "all." All things (except percussion-caps, &c.) that *are*, commercially speaking, manufactures of metals are entitled to the reduction; but the use of "all" will not extend the discount to *any* article that is not, in a commercial sense, such a manufacture. Citing authorities to the elementary principle that "the meaning of the legislature is the law"—per Strong, J., in Raymond *v.* Thomas, No. 146 of this term—brings us no nearer the solution of the question of what the legislative intent was. That is determined not only from the language employed but from the subject-matter and the connection. It is not merely in common conversation, but also in law, that precisely the same word may mean different things accordingly as the intent is gathered from the context and surrounding circumstances. Thus, "water-course" may mean the stream or its land-bed. (Egremont *v.* Williams, 11 Ad. & El., 707.) And in the opinion in Union Pacific Railroad Company *v.* Hall, No. 583 of this term, read by Strong, J., February 28, 1876, it was remarked that in ascertaining the true eastern terminus, the language of those acts relating especially to that subject, and not those affecting the general objects of the railroad, was to be considered. In determining the meaning of the act of 1872, as applied to the tariff of 1864, c. 171, those acts are the ones to be examined. The remarks as to mode of classification, &c., are all immaterial if the *conclusion* reached is correct, that these importations are not, within the meaning of this reducing act of 1872, "manufactures of metals." They were made only with reference to establishing that position. If it is the correct one, the method of reaching it is of no consequence. The section speaks of "all manufactures of iron and steel;" recognizing these two as different things when either is used as part of a manufactured article, though steel is made *from* iron.

The court finds (what would, doubtless, have been recognized without the formality of a special finding) that "all the articles in suit were generally dealt in by persons connected with the manufacture and sale of pigments, and are staples of trade in that line of commerce. Nitrate of lead is principally dealt in, however, by wholesale druggists. *Metal dealers* do not usually deal in *any* of these articles." (Record, 9, top.) It also appears upon the preceding page that these importations were to be used in the manufacture of *pigments*, which Webster, in his dictionary, as well as the courts, "confounds" with *paints*. Independently of this finding, I presume nobody would go to a place kept exclusively as a hardware store for white lead or either of the other articles enumerated.

In answer to the citation of Mr. Sherman's remarks, made with reference to a proposition that never did become a law, as affecting this statute, I will refer to Aldridge *v.* Williams, 3 Howard, 1, 24.

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